IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

WP(C).No. 22598 of 2006(M)

AGAINST THE ORDER DATED 05/01/2006 IN IA. 4596 /2004 IN OS.689/2001 of PRL.M.C., KOLLAM

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PETITIONER:

GOPALAKRISHNAN NAIR,
KRISHNA VILASOM VEEDU, ULIYAKOVIL EAST VILLAGE,
KOLLAM.

BY ADV. SRI.S.SANTHOSH KUMAR

RESPONDENTS:

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1. ASHA, W/O.LATE SREEDHARAN NAIR,
VELLANGAL VEEDU, UDAYAKOVIL, KOLLAM.

2. PRAMOD, S/O.LATE SREEDHARAN NAIR,
DO. DO.

3. PRATHAP, S/O.LATE SREEDHARAN NAIR,
DO. DO.

4. PRAVEENA, S/O.LATE SREEDHARAN NAIR,
HOUSE NO.3, MATHRUKA NAGAR, KOLLAM.

5. PREMJITH, S/O.LATE SREEDHARAN NAIR,
VELLANGAL VEEDU, UDAYAKOVIL, KOLLAM.

BY ADV. SRI.P.B.SURESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/11/2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

Ext.P1:- True copy of the plaint in O.S.No.689/01 before the Principal Munsiff Court, Kollam.

Ext.P2:- True copy of the petition dated 6-11-2004 along with affidavit of Power of Attorney Holder of the petitioner.

Ext.P3:- True copy of objection filed by the respondents in I.A.No.4596/04 in O.S.No.689/01.

Ext.P4:- True copy of the Order dated 5-1-2006 in I.A.4596/04 in O.S.689/01 of Principal Munsiff's Court, Kollam.

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO.22598 OF 2006

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Dated this the 29th day of November, 2006

JUDGMENT

Petitioner is the plaintiff. Respondents are the defendants. Petitioner is challenging Ext.P4 order whereunder learned Munsiff dismissed I.A.4596/04, the application filed by petitioner to implead legal heirs of deceased first defendant. Under Ext.P4 order, application to implead the legal heirs were dismissed on the ground that first defendant died on 15.11.03 and as the legal heirs were not impleaded within time, the suit as against first defendant abated and without application to set aside abatement, legal heirs cannot be impleaded. Learned counsel appearing for the petitioner pointed out that second defendant is the wife of first defendant and as she is one of the legal heirs in the party array, the finding of learned Munsiff that the suit as against first defendant abated is illegal and therefore it is to

be quashed. Learned counsel appearing for first respondent, wife of the deceased did not dispute the legal position.

2. When one of the legal heirs of the deceased defendant is a party to the suit and is capable of representing the estate of the deceased, the suit as against deceased defendant will not abate. Hence there is no necessity to set aside abatement as found by the learned Munsiff in Ext.P4. Ext.P4 order is therefore quashed. Learned Munsiff is directed to consider and dispose I.A.4596/04 afresh in accordance with law and dispose the suit expeditiously.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006